IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12354 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL PRAKASH SOCIETY THRO' SECRETARY,

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12354 of 2002

MR UTPAL M PANCHAL for Petitioner No. 1

Mr. KP Raval, AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

MR PRASHANT G DESAI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 25/06/2004

ORAL JUDGEMENT

The petitioner society, whose land is earmarked under the Town Planning Scheme No. 14 for the purpose of widening of the road, has preferred the present Special Civil Application under Article 226 of the Constitution of India for an appropriate writ, direction or order restraining the respondent authorities from deducting any

area of land belonging to the society and further to direct the respondents to widen the road in such a way that no portion of land of the society is deducted. However the learned advocate appearing for the petitioner does not press the prayer in terms of para 31(A). Therefore this Court is not dealing with the same. The petitioner has also prayed for an appropriate writ, direction or order directing the respondents to vary the Town Planning Scheme in the area in which the land of the petitioner is situate under the provisions of Sections 70 and 71 of the Town Planning Act so as to exclude the lands of the petitioner from the said Town Planning Scheme No. 14.

2. Though the prayer in terms of Para 31(B) is some what similar to that of prayer 31(A) which is not pressed by the petitioner, in view of the fact that a prayer is made for an appropriate direction or order directing the respondents to vary the Town Planning Scheme, this Court deems fit to deal with the arguments so far as the prayer in terms of Para 31(A) is concerned.

3. Shri UM Panchal, learned advocate appearing on behalf of the petitioner, has submitted that the petitioner had earlier preferred Special Civil Application No. 4433 of 1998 before this Court [Coram: M.S. Shah, J.] which came to be disposed of by this Court by judgment and order dated 23rd June 1998 and in view of the fact that at the relevant time it was only at the stage of draft scheme and the petitioner's representation was already pending before the authority, the concerned authority was directed to consider the representation/objections submitted by the petitioner and till the preliminary scheme is sanctioned the Corporation was directed not to take forcible possession of the petitioner's land. Shri Panchal has submitted that pursuant to the order dated 23rd June 1998 passed by this Court in Special Civil Application No. 4433 of 1998, as such the petitioner had even filed objections by way of another representation also. However, in the notification dated 17th November 2000 issued by the State Government sanctioning the preliminary Town Planning Scheme No. 14, there is no reference either to the Special Civil Application No. 4433 of 1998 or the directions issued by this Court having been complied with by considering the representation/objections submitted by the petitioner. Therefore, he has submitted that as there is no mention in the said Notification dated 17th November 2000, it is to be presumed that the objections submitted by the petitioner are not considered by the Town Planning authority and that the order passed by this

Court in the aforesaid Special Civil Application has not been complied with and therefore the prayer of the petitioner for an appropriate writ, direction or order directing the respondents to vary the scheme as prayed for is required to be granted. On merits also, the petitioner has submitted that as such 60 feet road is not required to be sanctioned under the Town Planning Scheme and therefore he has requested to pass an appropriate order directing the respondents to vary the same.

4. In response to the notice issued by this Court, an affidavit-in-reply has been filed on behalf of respondent No.4, Surat Municipal Corporation. It is stated in the said affidavit-in-reply that the preliminary scheme has already been sanctioned by Notification dated 17.11.2000 and that in view of the provisions of Section 65(3) of the Act the effect of sanctioned scheme is as if the same is enacted as law. It is also submitted in the said affidavit-in-reply that in view of the provisions of Section 67 of the Act all the lands have been vested in the Corporation being appropriate authority free from all encumbrances and therefore at present the petitioner has no right, title or interest in the land in question which is to be taken over by the Corporation for the purpose of widening of the road. In view of the aforesaid provision it is submitted that as such the petitioner is required to hand over the vacant possession of the land which is vested in the corporation for the purpose of widening of the road. It is also submitted that as per the practice normally 25% to 30% of the land is reserved under a Town Planning Scheme. However, in the present case only 5 per cent of the land has been carved out for the purpose of widening of the road. It is also submitted that the proposal which is given by the petitioner for getting the land from the otherside of the property of the petitioner and for taking that land in lieu of the land in question for the purpose of widening of the road is concerned, it is submitted that on the other side of the land of the petitioner there is a scheme No.12 which has already been sanctioned long back in the year 1990 and therefore it not possible to vary the scheme by getting the land from other side of the road. It is also submitted in the said affidavit-in-reply that the adjoining landowner of the petitioner society has in fact voluntarily handed over possession of the land which has been carved out for the purpose of widening of the road.

5. An affidavit-in-reply is also filed on behalf of the State Government, i.e., Senior Town Planner, Gandhinagar, in which the question with regard to

consideration of the objections submitted by the petitioner is dealt with. It is specifically stated therein that "It is not true that chance of hearing is not given. Town Planning Officer has already issued a notice." It is also further submitted in the said affidavit-in-reply that the representation made by the petitioner society on planning point of view has been considered and thereafter the Town Planning Officer has prepared and submitted preliminary scheme to the Government and thereafter the Government has sanctioned the scheme on 17th November 2000 and it is in force from 18.12.2000.

6. Heard the learned advocates appearing for the parties. What is prayed in the petition is to direct the respondents to vary the scheme exercising the powers under Sections 70 and 71 of the The Gujarat Town Planning and Urban Development Act, 1976 (hereinafter be referred to as 'the Act') so as to exclude the lands of the petitioners from the said Town Planning Scheme No.14. Section 70 of the Act gives power to the appropriate authority to apply in writing to the State Government for variation of the scheme, if the appropriate authority considers that the scheme is defective on account of any error, irregularity or any informality. In the present case, after considering the objections submitted on behalf of the petitioner to the draft scheme as well as the preliminary scheme, the preliminary scheme has become final. If ultimately the appropriate appropriate considers that the scheme is defective on account of the reasons which are stated hereinabove, then it is the appropriate authority who has to move an application for the purpose of variation of the scheme. The petitioner as such cannot pray for directing the authority to vary the scheme and hence such a prayer considering the scheme of the Act cannot be granted. The only thing is that before the preliminary scheme is finalised the objections which are submitted by the petitioner are required to be considered by the appropriate authority. In the affidavit-in-reply it is specifically stated that after considering the objections submitted by the petitioner the preliminary scheme is sanctioned. Under the circumstances, when a decision is taken to finalise the preliminary scheme after considering the objections submitted by the petitioner, the scheme has become part of the Act which cannot be challenged by the petitioner. If the prayer which is sought for by the petitioner in the present Special Civil Application to direct the respondents to vary the scheme exercising the power under Sections 70 and 71 of the Act so as to exclude the lands of the petitioners from the said Town Planning Scheme No.

14 is granted, then no Town Planning Scheme can be implemented. The contention of the petitioner that there is no need for 60 feet road cannot be considered by this Court. It is ultimately for the appropriate authority to decide and come to the conclusion to frame the scheme and in order to fix the width of the road so many other aspects are required to be considered by the appropriate authority. While preparing the Town Planning Scheme, they are also required to consider the need for a bigger road in future also. If after considering the objections, the Town Planning Scheme is finalised, then this Court has no jurisdiction to direct the respondents to vary the scheme. It is pertinent to note that there is no malafide alleged in the petition. Considering the affidavit-in-reply filed on behalf of the respondents; the Town Planning Scheme having become final; and the prayer in terms of Para 31(A) not pressed by the petitioner, the prayer in terms of Para 31(B) to direct the respondents to vary the scheme so as to exclude the lands of the petitioners from the said Town Planning Scheme No.14 also cannot be granted as, virtually, the relief, which is sought for in Para 31(B) is similar to that of the prayer which was sought for and not pressed in terms of Para 31(A).

7. In view of the aforesaid facts and circumstances of the case, there is no substance in the present Special Civil Application. Notice is discharged. Ad-interim relief stands vacated. At this stage, the learned advocate for the petitioner requests for stay of this order for some period. The request cannot be acceded to as the Town Planning Scheme has already become final and

the petitioner as such has no right, title or interest in the land in question as the land has been vested with the appropriate authority.

[M.R. Shah, J.]

rmr.